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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,190	06/12/2001	Dan Kalas	81206-243306	5821

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EXAMINER

GURZO, PAUL M

ART UNIT	PAPER NUMBER
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2881

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,190

Applicant(s)

KALAS ET AL.

Examiner

Paul Gurzo

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 17, 18 and 37 is/are allowed.
- 6) ☒ Claim(s) 1, 12, 13 and 34 is/are rejected.
- 7) ☒ Claim(s) 2, 4-11, 14-16, 35, and 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,12,13, and 34 stand rejected under 35 U.S.C. 102(b) as being anticipated by Itakura (5,365,076).

Regarding claims 1,12, and 13, 076 teaches a radiation source (30) comprising an outer housing (70) having a fastener (72) that is configured to be opened, a substrate (80) having a front surface removably contained within the housing, and a radioactive deposit inherently having a radioisotope deposited upon the front surface (col. 4, line 63 - col. 6, line 24, col. 18, line 47 - col. 19, line 7, and Fig. 10 and 11).

Regarding claim 34, 076 teaches a radiation source (30) comprising an outer housing (70) having a fastener (72) that is configured to be opened, a substrate (80) having a front surface removably contained within the housing, and a radioactive deposit inherently having a radioisotope deposited upon the front surface as applied above. 076 also teaches that the primary object of the invention is to provide a radiation image recording apparatus, with which radiation images to be subjected to energy subtraction processing and radiation images to be subjected to superposition processing can be obtained easily (col. 4, lines 47-51), which teaches on the claimed calibration step. Further, it is known in the art of radiation sources that nuclear imaging is a type of radiation and, as such, is anticipated by 076.

Allowable Subject Matter

Claims 2, 4-11, 14-16, and 35-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3, 17-18, and 37 are allowed. The closest prior art, Itakura (5,365,076) and Peterson et al. (WO 01/84560), teach the use of a radiation source comprising an outer housing, substrate removably contained within, and a radioactive deposit with at least two layers, and color indicating activity levels. However, there is no motivation or teaching to combine these two references, because doing such would teach away from the present claims.

Response to Arguments

Applicant's arguments filed September 15, 2003, with respect to claims 1,12,13, and 34 have been fully considered but they are not persuasive. Applicant argues that the Itakura reference does not teach a radiation source in claim 1 or a radioisotope fixedly deposited. In addition, Applicant argues that the Itakura reference teaches away from the claimed invention.

In response, though the prior art does teach a radiation image recording apparatus, they still do teach a radiation source (30) and radiation (32) that irradiates the object and sheet (col. 10, lines 13-32). This teaches on the claimed use of a radiation source. Further, the Examiner maintains that since there is a radioactive deposit that there inherently can be a radioisotope.

In addition, it is not understood how the Itakura reference teaches away from the claimed invention. Applicant argues that receiving radiation is the antithesis of the present invention, but both the prior art and the present invention are concerned with receiving and depositing radiation (page 12). Applicant states that the present invention is directed to transmission of radiation by a

radiation source. Examiner states that the prior art also teaches transmission of radiation (32) by a radiation source (30). Therefore, the prior art does not teach away from the claimed invention.

Applicant's arguments, see pages 10-15, filed September 15, 2003, with respect to claims 2-11, 14-18, and 35-37 have been fully considered and are persuasive. The rejection of claims 2-11, 14-18, and 35-37 has been withdrawn.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Gurzo whose telephone number is (703) 306-0532. The examiner can normally be reached on M-Thurs. 7:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Lee can be reached on (703) 308-4116. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

PMG
October 3, 2003


JOHN R. LEE
SUPERVISORY PATENT EXAMINER
TECHNICAL CENTER 8000